

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re:

NATIONAL FORGE COMPANY, et al.,

Debtor.

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF NATIONAL FORGE
COMPANY,

Civil No. 04-21 Erie

Document No. _____

Plaintiff,

and

OFFICIAL COMMITTEE OF RETIREES
OF NATIONAL FORGE COMPANY,

Intervenors,

v.

E. ROGER CLARK, both Individually and as
an Officer and Director of National Forge
Company, et al.,

Defendants.

DEFENDANTS' JOINT MOTION FOR AN ORDER ALLOWING
THEM TO WITHDRAW THEIR MOTION FOR SUMMARY JUDGMENT
AND FIXING THE DATE TO PLEAD TO THE AMENDED COMPLAINT

By this motion (the "Motion"), the Defendants, through their respective counsel, request that the Court permit them to withdraw their request for summary judgment and to fix the date by which they must plead to the Plaintiff's Amended Complaint, and in support of this request state as follows:

1. By Order dated August 17, 2005, the Court, on the Plaintiff's motion, permitted the Plaintiff to amend its Complaint to both correct glaring factual inaccuracies and to add new

counts. At the time the Court entered that Order, Defendants Clark, Cashman, Beyeler and Kaemmerer had moved for summary judgment based on the allegations contained in the Complaint, and the remaining Defendants had joined in that motion.

2. Even with the changes made by the Plaintiff in the Amended Complaint, the action is still ripe for summary judgment. The pleadings, however, are in an unusual posture: the Defendants' motion for summary judgment is pending and the Plaintiff has responded to it, and while that motion still addresses some of the Defendants' bases for summary judgment, it does not address all of them. Rather than the Defendants having two summary judgment motions pending (the one that is now and then the one the Defendants intend to file to address the new allegations in the Amended Complaint), the Defendants request that they be permitted to withdraw the pending motion without prejudice to seek summary judgment as to the Amended Complaint.

3. As for pleading to the Amended Complaint, under Fed. R. Civ. P. 15(a) the Defendants' pleading in response to the Amended Complaint is due on September 5, 2005. Because the Defendants expect that their responsive pleading will, in fact, be a motion for summary judgment, they request that the date by which they must plead to the Amended Complaint be extended until September 26, 2005, with the Plaintiff's response due to that motion on October 17, 2005, and the Defendants' replies due on October 31, 2005.

WHEREFORE, the Defendants request that the relief sought above be granted. A

proposed Order is attached for the Court's consideration.

Dated: September 2, 2005

Respectfully submitted,

/s/ Erik Sobkiewicz

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Robert A. Kaemmerer

s/ Brian M. McGowan

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Counsel for remaining Individual
Defendants

/s/ Joel M. Walker

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Certificate of Service

I hereby certify that on the 2nd day of September, 2005, I caused a copy of the foregoing
“Defendants’ Joint Motion for an Order Allowing Them to Withdraw Their Motion for Summary
Judgment and Fixing the Date to Plead to the Amended Complaint” to be served on the
following by first class mail, postage prepaid:

David W. Lampl, Esquire
John M. Steiner, Esquire
LEECH TISHMAN FUSCALDO &
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525 William Penn Place
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Dated: September 2, 2005

Respectfully submitted,

/s/ Erik Sobkiewicz

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